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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,143	02/16/2005	Mike Xiaoli Ma	33508/US/2/RBC/VEJ	5589
32940	7590	02/07/2006	EXAMINER	
DORSEY & WHITNEY LLP 555 CALIFORNIA STREET, SUITE 1000 SUITE 1000 SAN FRANCISCO, CA 94104			MADSEN, ROBERT A	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/525,143

Applicant(s)

MA, MIKE XIAOLI

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-11,13-16,18-20,22 and 23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,3-11,13-16,18-20,22 and 23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/26/05, 9/19/05.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

1. The Preliminary Amendment has been entered. Claims 1,3-11,13-16,18-20,22,23 remain pending.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1,3-8, 13-15,18,20 rejected under 35 U.S.C. 102(b) as being anticipated by Yu (WO 0108996A1).
4. Regarding claims 1, 3,5-8,20 Yu teaches a base cap 20 with an outer skirt to engage via threads to container (e.g. item 26 of Figure 1), as recited in claim 5, a tamper evidenced band (i.e. item 23 of Figure 1), as recited in claim 6, and a cylindrical well (e.g. below incline 28 of Figure 1) for holding a consumable (e.g. solute) as recited in claim 20 with a frangible membrane with a line of weakness 29 that is hinged via connector 221 or 220 prevent the seal from detaching with a pocket extending downward adjacent the line of weakness(Page 5, lines 4-8 in light of Page 9 ,lines 5-8 and Figure 1), an overcap 10 with an inner skirt (e.g. at items 16 of Figure 1) received within the well and rotatably connected (e.g. threads 14 of Figure 1) and a gripping structure (e.g. Yu teaches the overcap is twisted *from* the basecap on Page 10 and the outside of the downward inner skirt from portion 15 to portion 14 of Figure 1 provides an

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area to grip), and cutting member with an angled knife edge, as recited in claim 3, depending from the lower end of the inner skirt (item 13 of Figure 1) that severs the line of weakness when the overcap is rotated (Pages 8-10, Figures, and Claims) as recited in claim 1. Yu further teaches an inclined line of weakness (e.g. the line is cut at an angle in Figure 1 near the line 29) as recited in claim 1. Yu also teaches the base cap 20 also includes an annular groove (the area intended to receive the security strip 11 of the overcap that is above item 24 and below the threads 25 and line 20 in Figure 1) and the overcap includes a locking structure/frangibly connecting security strip 11 with an inward extending portion at the top of line M, as recited in claims 7 and 8, that is rotatably received within the groove that axially limits the over cap with respect to the cap (Page 5, Page 8, lines 6-14 and Page 9 8-15) as recited in claim 1.

5. Regarding claim 4, Yu teaches the process of twisting cuts the membrane, greater than 0° turn (Page 10).

6. Regarding claim 13, Yu teaches a bead (i.e. angled top portion of the skirt above the threads and on the opposite side of the skirt as the threads, just above line 15 in Figure 1) that corresponds to the inner chamber to seal (i.e. complementary angle to the bead of the overcap that is located at the upper chamber of the base cap above line 25).

7. Regarding claim 14, the lower circumference of the over cap (i.e. just above and adjacent to the cutting member 13 in Figure 1) serves as a pushing member to push the membrane.

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8. Regarding claim 15 and 18, the security strip 11 serves as a lock upon full rotation when the projection at line M engages under the lower projection at item 20 below the threads 25 (See Figure 1).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu (WO 0108996A1) as applied to claims 1,3-8, 13-15,18 above, further in view of Birkmayer et al. (US 20030132244A1).

11. Regarding claims 9-11, Yu teaches the tamper evidenced seal is pulled and removed from the overcap. Then the overcap is rotated to sever the line of weakness (page 10). However Yu is silent in teaching the seal is separated from the overcap by twisting 0-5° and the overcap is twisted an additional 2-10° to begin to sever the line of weakness as recited in claims 9-11.

12. Birkmayer et al. also teach a container closure comprising a base cap including a sealed well for a consumable(figures 4 and 6) with an over cap that includes an angled knife member (figure 54) wherein movement by the knife severs the well to

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release the consumable into a container (Figure 8). Birkmayer et al. also teach, like Yu, a pocket (item 36) to receive the cutting member and a transition area or hinge (item 50), and line of weakness (item 52). See paragraphs 8-15,43-46,49-51,63,64,67,68. Birkmayer et al. further teach, like Yu, a band of tamper evidence that prevents the movement of the over cap and knife until it removed, but Birkmayer et al. teach the band is removed by rotating the overcap and further rotating the overcap will cause the knife to sever the line of weakness(paragraphs 36 and 37). Therefore, it would have been obvious to modify Yu and include a band that is rotatably removable from 0-5°, since a rotatably removable band would not become detached from the container neck and does not generate any waste, whereas the band of Yu requires completely removing the band from the neck of the container, which would generate extra waste that the consumer would have to discard. One would have been substituting one tamper evidencing structure for another for the same purpose: preventing the movement of an over cap and a knife until removal so that an overcap may be rotated causing the knife to sever a sheet allow a consumable to fall into a container. It would have been further obvious to modify Yu such that further rotation of the over cap of 2-10°severs the line of weakness, depending on the size of the pocket, since both Yu and Birkmayer et al. include a pocket to hold the knife and the knife must be rotated out of the pocket to sever the line of weakness.

13. Claims 16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu (WO 0108996A1) as applied to claims 1,3-8, 13-15,18 above.

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14. Regarding claim 16, Yu teaches the overcap and basecap are engaged via threads, but does not teach that a full rotation is 300-330°. However, to select any particular full rotation angle would have been obvious depending on the number of threads selected and the desired amount of rotation required for engaging the two caps.

15. Regarding claim 19, Yu teaches the overcap and basecap are engaged via threads and that the recess/projection locked engagement between a security strip (i.e. item 11) of the overcap and basecap prevents further movement of the overcap on the basecap until the security strip 11 that is detached (as discussed in the rejection of claims 1,3-8,13-15, and 18 above). Yu further teaches another security strip between the basecap and container is detached by twisting (Page 10 lines 13-15). Yu is silent in teaching an audible sound is produced when the overcap and basecap are in locked engagement. However, it would have been obvious to provide an audible sound when the engagement is reached since (1) one cannot see the recess/projection in the engaged position and (2) over-rotating the cap would result in the removal of the security strip and unintentional release of the consumable.

16. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu (WO 0108996A1) as applied to claims 1,3-8, 13-15,18 above, further in view of Gross et al. (US 6477743 B1).

17. Regarding claim 22 and 23, Yu teaches a container with closure comprising an overcap and a basecap that rotatably engages wherein the overcap severs a membrane between the basecap and the container to allow a consumable to dispense from the

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closure to the container prior to dispensing the contents of the container, as discussed in the rejection of claims 1,3-8, 13-15,18 above. Yu also includes a security strip, or tamper evident structure, on the base cap, also as discussed in the rejection of claims 1,3-8,13-15 and 18 above, Yu is silent in teaching the overcap includes an aperture and that the closure further includes a dust cap that is connected via a tamper evident strip that engages with the tamper evident structure on the base cap as recited in claims 22 and 23. Gross et al. also teach a container with closure comprising an overcap and a basecap that rotatably engages wherein the overcap severs a membrane between the basecap and the container prior to dispensing the edible contents of the container but Gross et al. further teach providing an aperture in the overcap so that the product can be dispensed through the aperture when the container is squeezed and provide a dust cap (i.e. overcap) that is tethered to the closure with a hinge or strap on the container to protect the closure aperture. (Abstract, Column 2, line 33 to Column 3, line 10, Column 4, lines 32-54, Column 8, line 57-Column 9, line 15). Therefore, it would have been obvious to modify Yu and include an aperture in the overcap as recited in claim 22, depending on (1) the type of container selected and (2) the desired means of dispensing, since Gross et al. teach providing a hole in an overcap of a container with closure comprising an overcap and a basecap that rotatably engages wherein the overcap severs a membrane between the basecap and the container prior to dispensing the edible contents of the container allows one to dispense the edible contents by squeezing the container to force the contents through the aperture. It would have been further obvious to modify Yu and include a dust cap, as recited in claim 22,since Gross

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et al. teach providing a dust cap to protect the aperture, which would be desirable since both Yu and Gross et al. teach edible contents. Furthermore, it would have been obvious to include a tamper evident structure on the dust cap that engages the tamper evident structure on the base cap, as recited in claim 23, since Yu includes a security strip, or tamper evident structure, on the base cap and Gross et al. teach the dust cap should be attached to the closure such that it is attached via the container and such a point of attachment immediately below the closure would be on the container at the tamper evident structure of the base cap.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hierzer et al. (US 20050205438 A1) teaches a closure for a container comprising a base cap, over cap, well with a membrane for holding a comestible. Yurkewicz et al. (US 20030230546 A1) teaches the conventional squeeze bottle closure assembly.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 8:00AM-4:30PM M-F.

20. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


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21. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen
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